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NAME: John Good  
 CDC NO.: T-82633  
 CELL NO.: E-1-88

Plaintiff In Pro Se

*PRO Se*  
**RECEIVED**

JUL - 9 2008

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
**FILED**

JUL 09 2008

United States District Court For NORTHERN DISTRICT OF CALIFORNIA  
NORTHERN District  
 (Insert Court Name And District)

In the matter of  
John Good  
 Plaintiff,  
 vs.  
C/O BORRISO / RN MIKE BARKER  
MD ROBERT BOWMAN  
 Defendants.  
CALIF DEPT OF CORRECTIONS

CASE NO.: C08-3285-PJH

EX PARTE MOTION FOR ASSIGNMENT  
 OF COUNSEL, AND SUPPORTING  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES AND DECLARATION.

TO: THE ABOVE-ENTITLED COURT;

I

INTRODUCTION

1. COMES NOW, 7-5-08 John Good, plaintiff in the  
 above-entitled matter, pursuant to 28 USC § 1915(d), and moves  
 the Court for assignment of counsel to assist plaintiff in  
 further litigation of this action.

2. This Motion is based upon the forthcoming facts,  
 memorandum of points and authorities, the attached declaration  
 of plaintiff, as well as all other papers currently on file in  
 this matter.

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II

STATEMENT OF FACTS

3. Plaintiff is currently incarcerated at the California  
SILINAS VALLEY STATE PRISON PO BOX 1050 SOLEDAD CA 93960 E-1-88

4. Plaintiff currently lacks any meaningful source of  
income to utilize in employing services of Counsel to provide  
experienced legal advice and skills to further the litigation of  
this case.

5. Plaintiff only has limited access to a law library and  
other materials necessary to facilitate proper legal research;  
the time permitted to study available legal materials is  
extremely limited during access periods.

6. Plaintiff is a layman at the law with little experience  
in the complex and confusing methods of legal research,  
reasoning, and writing. Plaintiff has virtually no knowledge of  
proper Federal Procedural Rules, Rules of Court, or Rules of  
Civil Procedure which are a fundamental necessity and of  
critical importance to proceed with important discovery and in  
obtaining certain types of evidence plaintiff believes  
defendants currently possess or have access to.

7. Plaintiff does not know what papers should now be filed  
or submitted to the court or defendants, to further the  
litigation of this case. Plaintiff has attempted to read and  
understand the Federal Rules of Civil Procedure, but plaintiff  
has been left predominantly confused regarding appropriate  
action at this point.

8. Plaintiff sincerely desires to pursue the above-entitled  
action and seek the relief requested in the original complaint

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1 previously filed in this matter.

2 9. Plaintiff has limited formal education and no education  
3 in the law. Plaintiff does not understand or comprehend complex  
4 legal reasoning, standards, or language when attempting to study  
5 case precedent, codes, statutes, and other legal publications.  
6 Plaintiff was required to enlist assistance of fellow prisoners  
7 with limited knowledge of the law, in order to prepare and file  
8 the pleadings previously filed with the court; including this  
9 current Motion For Assignment Of Counsel. The assistance of  
10 fellow prisoners is nearly non-existent due the confinement  
11 conditions of my current housing unit; in fact, it is primarily  
12 due to pre-printed forms available in the law library plaintiff  
13 was able to submit the instant Motion and other papers on file  
14 in this action.

15 III

16 REASONS THE COURT SHOULD ASSIGN COUNSEL

17 10. Plaintiff is unable to employ counsel; (see Forma  
18 Pauperis application on file in the above-entitled action.)

19 11. The issues involved in this matter are complex and it  
20 is difficult for plaintiff to understand how to further proceed  
21 to press plaintiff's claims to a final resolution.

22 12. The issues involved necessitate serious and complex  
23 discovery proceedings to be undertaken by plaintiff in order to  
24 prepare for further proceedings on summary judgment or  
25 preparation for trial.

26 13. The prison limits plaintiff's access and time with law  
27 books and other legal materials necessary to facilitate proper  
28 legal research and drafting of papers.

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1 14. Plaintiff has very little legal experience and  
2 knowledge of law.

3 15. The interests of justice and the economy of judicial  
4 resources would be best served by assignment of counsel to  
5 assist plaintiff in this action.

6 DATED: 7-5-08

John Good T82633  
(Signature)

JOHN GOOD T82633  
(Print Name)

9 Plaintiff In Pro-Se

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MEMORANDUM OF POINTS AND AUTHORITIESARGUMENT

Plaintiff points out there is clear statutory authority under which the District Court may appoint or assign counsel to assist pro se plaintiff in litigating this civil action.; (28 USC § 1915(d); (in relationship to 42 USC § 1983); also see Norris v. Wainwright, (1977) 598 F.2d 130, 133-134; ("fundamental fairness" is the test by which the decision to appoint assistance of counsel rests.)

Another primary consideration is the right of every litigant, rich or poor, to equal consideration before the courts; (Coppedge v. United States, (1962) 369 U.S. 438, 456.) Even without statutory authority federal courts, in a proper situation or prevailing circumstances of a case, may assign counsel to assist an indigent state prisoner plaintiff under the court's supervisory powers and sound discretion; (McNabb v. United States, (1943) 318 U.S. 332, 346-347; also see The Supervisory Power of the Federal Courts, 76 Harv. L. 1656.)

Some courts hold counsel is not necessary "unless the circumstances of the particular case are such that counsel would be vital to attain due process, or access to the courts." (Eskridge v. Rhay, (1965) 345 F.2d 778, 782; Anderson v. Heinze, (1958) 258 F.2d 479, 482, 484; Dillon v. United States, (1962) 307 F.2d 445, 447; Bounds v. Smith, (1977) 430 U.S. 817, 823-832.)

Plaintiff is well aware the United States Supreme Court and Congress have never held a civil litigant has a right to have counsel assigned for assistance in pursuing claims in the



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1 courts. However, the question of whether or not to assign  
2 counsel is solely within the discretion of the court and that  
3 sound discretion "requires that counsel be appointed at least in  
4 some cases." (United States v. Wilkens, (1964) 338 F.2d 404,  
5 406; United States v. Wilkens, (1960) 281 F.2d 707, 715.)

6 Many entanglements and unnecessary delays and expense to  
7 the judiciary and parties may be avoided by assignment of  
8 counsel; (Taylor v. Pegelow, 335 F.2d 147, 150.) At least one  
9 District Court has viewed in the context of habeas corpus that,  
10 unless the application could be dismissed "summarily," counsel  
11 should be assigned to assist the impoverished "layman prisoner";  
12 (Cullins v. Crouse, (1965) 348 F.2d 887, 889.)

13 In civil rights actions under 42 USC § 1983, to redress  
14 injuries inflicted by individuals "acting under color of state  
15 law", courts have considered assignment of counsel to be of  
16 fundamental importance where the plaintiff (prisoner civil  
17 litigant) must conduct discovery to pursue the case and the  
18 plaintiff cannot conduct the discovery himself; (Murrell  
19 v. Bennett, (1980) 615 F.2d 306, 309.) Perhaps more  
20 importantly, "summary judgment" proceedings against a prisoner  
21 plaintiff, unable to secure discovery to ward off such judgment,  
22 cannot be permitted against a layman prisoner plaintiff unaware  
23 of proper opposition to such proceedings; (Ibid, at 310-311.)

24 In this case, as stated in the foregoing facts and  
25 forthcoming attached declaration, plaintiff has clearly  
26 demonstrated he cannot proceed further in litigating this  
27 meritorious proceeding without assistance from someone  
28 knowledgeable in the intricacies entailed in pursuit of this

1 type of proceeding.

2 CONCLUSION

3 WHEREFORE, the foregoing reasons and any others deemed  
4 appropriate by the court, plaintiff prays the court assign  
5 counsel to in further pursuit of this action.

6 DATED: 7-5-08. Respectfully submitted,

7 John Good T82633  
8 (Signature)

9 JOHN GOOD T82633  
10 (Print Name)

11 Plaintiff In Pro-Se  
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DECLARATION SUPPORTING MOTION FOR COUNSEL

I, John Good T82633, declare the following:

1. I am the plaintiff in the above-entitled action.

2. I am currently a state prison inmate with no meaningful source of income to utilize in employing assistance of counsel.

3. My personal attempts to read law books, Rules of Court and Court Procedures have resulted in utter confusion and furthered my inability to comprehend what action I should take next to further prosecute this action.

4. I have had to obtain the assistance of other prisoners, who appeared to have some knowledge of law, under very difficult and restrictive conditions to assist me in writing and filing the papers currently on file before the court.

5. FEDERAL CIVIL RIGHTS SUIT IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT, U.S. COURT HOUSE 450 GOLDEN GATE AVE. SAN FRANCISCO CA 94102-3483

6. \_\_\_\_\_

7. \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on (date) 7-5-08, at (place) SILINAS VALLEY STATE PRISON Soledad CA 93960, California.

John Good  
(Signature)

Plaintiff In Pro-Se



PLEASE TAKE NOTICE THAT I JOHN GOOD  
WILL PAROLE JULY 8<sup>TH</sup> 2008  
ANY FURTHER CONTACT WILL NEED  
FORWARDED TO AS FOLLOWS

John Good  
201 N YUCCA AVE Apt H-101  
BARSTOW Calif 92311

PLEASE TAKE NOTE THAT I AM AN  
INDEPENT INMATE MY CERTIFICATE  
OF TRUST FORM WAS SENT WITH  
MY COURT FORMS  
THANK YOU

MESS # 760 221-3136  
OR 760 252 4194

7-5-08

John Good T82633  
E-1-88 PO Box 1050  
Soledad CA 93960

PLEASE SEND ME COURT DATE ect  
THANK YOU

Don Hood T82633  
51-88 PO Box 1050  
Silinas Valley State Prison  
Coloedad CA 93960

Legal Mail  
STATE PRISON  
GENERATED MAIL

To  
United States District Court for  
Northern District / Civil Right Division  
U.S. Court House  
450 Golden Gate Ave  
San Francisco CA

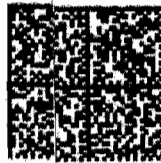
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